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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

EDWIN CAMPOS,

Plaintiff and Respondent,

v.

JOHN R. MILLER,

Defendant and Appellant.

A145013

(Alameda County
Super. Ct. No. RG14747926)

John Miller appeals from a judgment dismissing his challenge to a decision of the California Labor Commissioner that concluded Miller owed respondent Edwin Campos unpaid wages. The trial court dismissed the challenge because Miller failed to post a bond as required under Labor Code section 98.2, subdivision (b).¹ On appeal, Miller argues that the court was required to waive the bond requirement, even without a request, because Miller's court fees had been waived. We affirm.

I.

FACTUAL AND PROCEDURAL
BACKGROUND

In June 2014, Campos filed a claim with the labor commissioner alleging that he was owed overtime compensation from Miller, his former employer. The claim was heard in October 2014 by a hearing officer designated by the commissioner. Campos appeared and testified at the hearing, but Miller neither appeared nor submitted an answer. The day after the hearing, the hearing officer issued an "Order, Decision or

¹ All further statutory references are to the Labor Code unless otherwise noted.

Award of the Labor Commissioner” (the decision). The decision found that Campos had been employed by Miller as an apartment remodeler from February to May 2014 under an oral agreement. The decision noted that because “[Miller] failed to attend the scheduled hearing or to submit an Answer to the Complaint, there is nothing before the Labor Commissioner from or on behalf of [Miller] that would deny or mitigate [Campos’s] Complaint.” The decision awarded Campos a total of \$5,732.17, which was composed of \$1,665 in overtime wages, \$592 for liquidated damages, \$100.17 in interest, and \$3,375 in penalties. The notice of the decision summarized Miller’s rights to challenge the decision by filing an appeal in the superior court. The notice included a section stating, “**PLEASE TAKE NOTICE:** Labor Code Section 98.2(b) requires that as a condition to filing an appeal of [the decision] the employer shall first post a bond or undertaking with the court in the amount of the [decision]”

In November 2014, Miller filed a notice that he was appealing the decision to the Alameda Superior Court. At the same time, he filed a request to have his superior court fees waived, and the request was granted. In legal parlance, this order meant that Miller was allowed to proceed in forma pauperis. The order granting the fee waiver identified the categories of fees that were waived, but it was silent regarding the bond requirement.

Campos moved to dismiss the superior court action on the grounds that Miller failed to post the required bond and that the bond requirement was jurisdictional. After a hearing in early January 2015, the trial court granted the motion. Judgment was entered two months later, on March 11.

On April 27, Miller filed a notice of appeal. About a month after that, on May 21, he filed in the superior court a notice designating the record on appeal along with a “Proposed Statement on Appeal,” apparently intending for it to constitute a settled statement of the record under California Rules of Court, rule 8.137. In the proposed statement, Miller alleged that Campos had falsely claimed to be an employee, that he (Miller) had been unable to attend the hearing because of an illness, and that the trial court should have waived the bond requirement because he is indigent. Campos filed objections, and the court denied the proposed statement in a written ruling. In the ruling,

the court found that the proposed statement improperly “include[s] information beyond the scope of this court’s record and furthermore is argumentative and inaccurate.”

Regarding Miller’s argument that the court should have waived the bond requirement, the court made three points. It first noted that Miller had failed to oppose the motion to dismiss, appear at the hearing, or “ever make a request to this court that the court waive the bond or undertaking” It further observed that “nothing in the [fee-waiver] order states that [Miller] does not need to post the bond” And it lastly explained that if Miller had made a request for relief from the bond requirement, “then at that time the court would have exercised its discretion appropriately to determine whether the bond requirement should have been waived.”

II. DISCUSSION

1. The Standard of Review

An appeal to the superior court of a commissioner’s wage decision is unlike a typical judicial review of an administrative ruling. Unlike judicial reviews of other types of administrative decisions, an appeal of a labor commissioner’s wage decision to the superior court nullifies the decision, and the court conducts a new trial of the dispute. (*Arias v. Kardoulis* (2012) 207 Cal.App.4th 1429, 1435; § 98.2, subd. (a).) “The trial court ‘hears the matter, not as an appellate court, but as a court of original jurisdiction, with full power to hear and determine [the claim] as if it had never been before the labor commissioner.’ [Citations.]” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1116–1117; § 98.2, subd. (a).) Although denoted an “appeal,” unlike a conventional appeal in a civil action, the hearing under the Labor Code is *de novo*. (§ 98.2, subd. (a).) “ ‘[A] hearing *de novo* [under Labor Code section 98.2] literally means a new hearing,’ that is, a new trial. [Citations.]” (*Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 835–836.) The decision of the commissioner is “entitled to no weight whatsoever, and the proceedings are truly ‘a trial anew in the fullest sense.’ ” (*Sales Dimensions v. Superior Court* (1979) 90 Cal.App.3d 757, 763.)

The judgment entered by the superior court, in turn, is subject to a conventional appeal to the appropriate appellate court. (*Sampson v. Parking Service 2000 Com., Inc.* (2004) 117 Cal.App.4th 212, 219–220.) Thus, in reviewing a trial court’s decision on a challenge to a commissioner’s wage determination, we review the trial court’s factual determinations to determine whether they are supported by substantial evidence, and we review legal conclusions flowing from those facts under the independent, or de novo standard of review. (See *In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 991, fn. 8; *KB Home v. Superior Court* (2003) 112 Cal.App.4th 1076, 1083.)

2. Miller Forfeited His Argument that the Trial Court Was Required to Waive the Bond Requirement.

On appeal, Miller argues that the judgment was wrongly entered against him because he was “entitled to a waiver of the bond requirement as a matter of law” in light of the fact that the trial court had granted his request to proceed in forma pauperis. We decline to reach the merits of this argument because we conclude that Miller forfeited it.

As we have discussed, in the trial court Miller did not ask for the bond requirement to be waived, object to Campos’s motion to dismiss, appear at the hearing on that motion, or challenge the court’s ruling on that motion. At no time before the judgment was entered did Miller ever argue or suggest that he was entitled to a waiver of the bond requirement because he was proceeding in forma pauperis. The only time Miller argued below that he was entitled to a waiver of the bond requirement was *after* the judgment when he submitted his materials for purposes of establishing the appellate record.

The argument was made too late to have preserved it for appellate review. Once Miller filed his notice of appeal, jurisdiction was vested in the appellate court and was no longer vested in the trial court. (See Code Civ. Proc. § 916; *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864.) The trial court was, therefore, unable to rule on Miller’s argument, and the court recognized as much by observing that *if* Miller had made a request for relief from the bond requirement, “then at that time the court would have exercised its discretion appropriately to determine whether the bond requirement should

have been waived.” By not making the argument until after jurisdiction vested in the appellate court, Miller deprived the trial court of the ability to rule on the merits of his claim that he was entitled to have the bond requirement waived. While Miller was permitted under California Rules of Court, rule 8.137, to seek a settled statement, the purpose of such a statement is to summarize the proceedings in the trial court and not to raise new arguments.

Parties cannot challenge an appealed judgment based on post-judgment occurrences except under limited circumstances. (*Reserve Insurance Co. v. Pisciotto* (1982) 30 Cal.3d 800, 813.) When an appellant fails to bring an alleged error to the trial court’s attention by a timely motion or objection, as Miller failed to do here, a forfeiture of the argument is implied. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 826.) Appellate courts will not reverse for allegedly erroneous rulings that could have been, but were not, challenged below. (*Doers v. Golden Gate Bridge, Highway & Transportation District* (1979) 23 Cal.3d 180, 184–185.) By making his argument too late and leaving the trial court unable to review its merits, Miller has left us likewise unable to review any substantive lower court ruling on the claim.

Accordingly, we reject as forfeited Miller’s argument that the trial court improperly failed to waive the bond requirement in light of his in forma pauperis status. And because all of Miller’s appellate claims are premised upon the forfeited claim, we must affirm the judgment below.

III. DISPOSITION

The judgment is affirmed.

Humes, P.J.

We concur:

Margulies, J.

Dondero, J.